

Message Text

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PAGE 01 PORT A 02276 212004Z

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ACTION L-02

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TAGS: EFIN, EEIN, HA

SUBJ: HAITIAN LEGAL SYSTEM WITH REFERENCE TO DUPONT CARIBBEAN

REF: STATE 237990

1. EMBASSY COMMERCIAL/LEGAL ASSISTANT HAS PROVIDED INFORMATION OUTLINED BELOW IN RESPONSE TO QUESTIONS ON HAITIAN LEGAL SYSTEM CONTAINED IN REFTEL. ANSWERS ARE NUMBERED SAME AS INCOMING QUESTIONS. DEPT SHOULD NOTE THAT HAITIAN LAWYERS FREQUENTLY DISAGREE AND THAT THERE WAS SOME DIFFICULTY IN TRANSLATING DIFFERENT LEGAL CONCEPTS.

2. CIVIL PROCEDURES:

A. HAITIAN LAW REQUIRES THAT A DEFENDANT BE INFORMED OF THE EXPECTED DATE FOR COURT HEARING. A MINIMUM OF 33 CALENDAR DAYS IS REQUIRED BETWEEN SERVICE OF THE WRIT OF SUMMONS AND OPEN COURT DEBATE, I.E., TRIAL. HOWEVER, TIME SPAN MAY BE LONGER THAN 33 DAYS, SINCE BEFORE TRIAL LAWYERS EXCHANGE PLEADINGS IN WRITING, AND THERE MAY BE MORE THAN ONE SUCH EXCHANGE, COURT DOES NOT INFORM LAWYER OF DATE SET FOR TRIAL. IT IS USUALLY THE DUTY OF THE MOST INTERESTED PARTY'S LAWYER (I.E. PLAINTIFF) WHO, AFTER FILING THE CASE WITH THE COURT CLERK, NOTIFIES THE DEFENDANT'S LAWYER OF THE DATE. SUCH AN INITIATIVE CAN BE TAKEN BY THE DEFENDANT'S LAWYER IF THE PLAINTIFF'S LAWYER FAILS TO

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PAGE 02 PORT A 02276 212004Z

DO SO. ACTUAL DATE OF TRIAL MAY VARY FROM DATE ORIGINALLY SCHEDULED,

DEPENDING UPON ADMINISTRATIVE SITUATION AND WORK LOAD OF COURT WHEN ESTABLISHED DATE IS REACHED. BUT ONCE THE FIRST HEARING HAS TAKEN PLACE, ANY SUBSEQUENT HEARINGS ARE HELD EVERY EIGHT DAYS. (AS NOTED IN EARLIER TELEGRAMS, THE SPECIAL COURT CALLED TO HANDLE EMERGENCY SITUATIONS FOLLOWS A DIFFERENT PROCEDURE AND DOES NOT REQUIRE A MINIMUM TIME PERIOD BETWEEN NOTIFICATION AND DATE OF HEARING.)

B. WELL-ESTABLISHED PRINCIPLE IN HAITIAN LAW PROVIDES THAT A PARTY CANNOT TESTIFY IN HIS OWN CASE, EXCEPT IN CIVIL CASES UNDER SPECIFIC CIRCUMSTANCES LIMITED TO: (1) CASES INVOLVING LESS THAN 16 GOURDES (\$3.20); (2) THERE EXISTS DOCUMENTARY EVIDENCE UPON WHICH A WITNESS CAN PROVIDE SUPPORTING OR ADDITIONAL INFORMATION; AND (3) IF PLAINTIFF IN AN EMERGENCY SITUATION HAS NOT BEEN ABLE TO PROVIDE WRITTEN EVIDENCE. IN CASE OF (3), PLAINTIFF'S WITNESSES MAY BE CROSS-EXAMINED BY DEFENDANT WHO MAY ALSO BRING UP HIS OWN WITNESSES IN ORDER TO CHALLENGE THE TESTIMONY OF PLAINTIFF'S WITNESSES. HOWEVER, THE ABOVE ARE EXCEPTIONS. CASES ARE USUALLY MADE ON THE BASIS OF DOCUMENTARY EVIDENCE ACCOMPANIED BY WRITTEN ARGUMENTS FROM PLAINTIFF. THESE STATEMENTS ARE PROVIDED DEFENDANT'S LAWYER, WHO REPLIES IN SIMILAR FASHION. THERE MAY BE SEVERAL SUCH EXCHANGES BEFORE THE COURT HEARING. THE TRIAL ITSELF WILL BE BASED ON THESE WRITTEN SUBMISSIONS AUGMENTED BY ORAL STATEMENTS FROM THE LAWYERS. IF EITHER LAWYER WANTS TO BRING UP NEW POINT AT TRIAL NOT INCLUDED IN WRITTEN SUBMISSIONS, TRIAL WILL GENERALLY BE POSTPONED SO THE REQUIRED WRITTEN STATEMENTS MAY BE EXCHANGED BY LAWYERS.

C. JUDGE BASES HIS DECISION ON EVIDENCE PROVIDED BY THE PARTIES, WITHIN THE FRAMEWORK OF THE LAW. HEARSAY EVIDENCE HAS NO VALUE AT ALL.

3. DAMAGES, RESTITUTION AND PERFORMANCE:

A. GREAT PRINCIPLE IN HAITIAN LAW IS THAT "NOBODY CAN GET RICHER AT ANOTHER'S EXPENSE." IN SOME CASES A CONTRACT WILL SPECIFY WHAT WILL HAPPEN TO PAYMENTS MADE OR EXPENSES INCURRED IF THE CONTRACT HAS TO BE CANCELLED FOR SOME REASON OR ANOTHER. IF THERE IS NO SUCH CLAUSE IN THE CONTRACT, A SETTLEMENT SHOULD BE MADE AT THE TIME OF CANCELLATION.

B. THE DOCTRINE OF "SUBSTANTIAL PERFORMANCE" DOES NOT EXIST IN HAITIAN LAW.

C. THE PARTIES TO A CONTRACT CAN AGREE TO "CURE" OR RESTORATION LIMITED OFFICIAL USE

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PAGE 03 PORT A 02276 212004Z

OF A CONTRACT OR ANY TYPE OF COMPROMISE SO LONG AS THE AGREEMENT IS CONSISTENT WITH PUBLIC ORDER. THESE ARE QUALIFIED "PRIVATE MATTERS."

D. "TIME IS OF ESSENCE" IS A RULE IN HAITIAN CONTRACT LAW.

E. THE GENERAL RULE IN HAITIAN LAW WITH RESPECT TO BURDEN OF PROOF IS THAT THE PARTY MAKING A "POSITIVE" ALLEGATION MUST PROVE HIS CLAIM. ON THE OTHER HAND, IN THE CASE OF A "NEGATIVE" ALLEGATION, I.E., FAILURE TO FULFILL AN OBLIGATION,

THE BURDEN OF PROOF RESTS ON THE OTHER PARTY. SPECIFICALLY, BURDEN OF PROOF RE DAMAGES FOLLOWS SAME GENERAL RULE. THE PLAINTIFF MAKES A POSITIVE ALLEGATION, I.E., THAT HE HAS SUFFERED LOSSES, AND HE MUST, THEREFORE, DEMONSTRATE THESE LOSSES IF HE WISHES TO RECEIVE DAMAGES OR TO BE RELEASED FROM HIS OWN OBLIGATIONS. A DEFENDANT'S FAILURE TO EXECUTE CONTRACTUAL OBLIGATIONS CAN EITHER RELEASE THE PLAINTIFF FROM NEED TO MAKE PAYMENTS OR CAN DIMINISH THE AMOUNT.

4. EXTENT OF DAMAGES DEPENDS ON LOSS INCURRED BY INJURED PARTY OR ON PROFIT WHICH HE WAS NOT IN A POSITION TO MAKE BECAUSE OF FAULT OF OTHER PARTY.

5. IN CIVIL, COMMERCIAL OR OTHER CASE, JUDGE DECIDES ONLY ON MATTERS SUBMITTED TO HIS ATTENTION. FAILURE BY EITHER PARTY TO APPEAL ANY JUDICIAL DECISION WITHIN 32 DAYS REPRESENTS A WAIVER TO RIGHT TO ATTACK THE DECISION IN ANY OTHER FORUM. NO RESTITUTION OR REIMBURSEMENT ISSUE CAN BE RAISED IF NOT RAISED PREVIOUSLY. THIRTY-TWO DAYS AFTER SERVICE OF A JUDGEMENT THE RULE "RES JUDICATA PRO VERITATE HABETUR" APPLIES TO ITS GREATEST EXTENT. SO, AS A PRACTICAL MATTER, THE FAILURE OF DCI TO BRING UP THE NEED FOR RESTITUTION OR DAMAGES IN RESPONSE TO THE GOH CLAIM MEANS THE COMPANY IS EFFECTIVELY BARRED FROM BRINGING UP THE MATTER IN HAITIAN COURTS. THE FAILURE OF THE GOH TO RAISE AGAIN THE SUBJECT OF DAMAGES DUE IT AFTER THE MATTER WAS ONCE SET ASIDE, MEANS GOH IS ALSO EFFECTIVELY BARRED FROM RAISING THE SUBJECT OF DAMAGES IN A HAITIAN COURT.

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